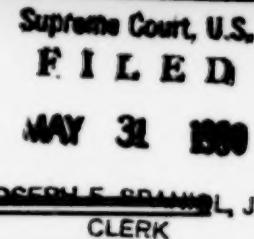


(9)
No. 89-1279



IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

PACIFIC MUTUAL LIFE INSURANCE COMPANY,
Petitioners,
v.

CLEOPATRA HASLIP, CYNTHIA CRAIG,
ALMA M. CALHOUN and EDDIE HARGROVE,
Respondents.

On Writ of Certiorari to the
Supreme Court of Alabama

BRIEF OF THE
ALABAMA DEFENSE LAWYERS ASSOCIATION
AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the constitutional defects in the award of punitive damages against Pacific Mutual were cured by Alabama's judicial review procedure.

(i)

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Supreme Court of AlabamaBRIEF OF THE
ALABAMA DEFENSE LAWYERS ASSOCIATION
AS AMICUS CURIAE IN SUPPORT OF PETITIONERINTEREST OF THE AMICUS¹

The Alabama Defense Lawyers Association (hereinafter "ADLA") is a non-profit association of 687 members of the Alabama trial bar who devote a substantial

¹ Pursuant to Rule 36, the parties' letters of consent have been filed with the Clerk.

amount of their professional time to representing defendants in civil lawsuits. Organized in 1964, its purposes include promoting improvements in the adversary system of jurisprudence and the administration of justice.

ADLA members collectively represent a substantial number of civil defendants against whom punitive damages are increasingly sought and awarded in Alabama. The ADLA has appeared as *amicus curiae* in numerous cases involving the constitutionality of large punitive damage awards, including *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986), in which this Court recognized that such questions constitute "important issues which . . . must be resolved,"² and *HealthAmerica v. Menton*, 551 So. 2d 235 (Ala. 1989), cert. denied, — U.S. —, 110 S. Ct. 1166 (1990).

Despite decisions by this Court questioning the constitutionality of large punitive damage awards, the Alabama Supreme Court has rejected all arguments that the Constitution affords any due process controls on punitive damages in civil cases where there is no fixed statutory limit. Because of the serious and unsettled problem of punitive damages in Alabama, *amicus* is vitally interested in securing plenary review of the question herein presented.

² The case of *Aetna Life Ins. Co. v. Lavoie* involved a \$3.5 million punitive damage award for the alleged bad faith failure to pay \$1,650.00 in health insurance benefits. The judgment was fully affirmed by the Alabama Supreme Court in an opinion authored by a justice who simultaneously was a plaintiff in a separate bad faith lawsuit against another insurer. This Court vacated on grounds of judicial disqualification and did not reach the punitive damages issues. On remand, the Alabama Supreme Court remitted the award to \$500,000.00 505 So.2d 1050 (1987).

SUMMARY OF THE ARGUMENT

The Alabama Defense Lawyers Association files this *amicus* brief to address two arguments of particular significance to Alabama. First, there is a significant problem with punitive damages in Alabama. Second, the Alabama Supreme Court has promulgated a post-verdict review procedure which is ineffective as applied. Moreover, this post-verdict process does not afford the trier of fact guidelines in ascertaining the amount of punitive damages to award.

ARGUMENT

I. THE PROBLEM OF PUNITIVE DAMAGES IN ALABAMA

In recent years, there have been several attempts to bring the problem of punitive damages in Alabama before this Court: *Aetna Life Ins. Co. v. Lavoie*, 470 So. 2d 1060 (Ala. 1984), vacated and remanded, 475 U.S. 813 (1986), on remand, 505 So. 2d 1050 (Ala. 1987); *Alabama Power Co. v. Cantrell*, 507 So. 2d 1295 (Ala. 1986), appeal dismissed, 486 U.S. 1028 (1988); *Alabama Power Co. v. Capps*, 519 So. 2d 1328 (Ala. 1988), appeal dismissed, 486 U.S. 1002 (1988); *Nationwide Mut. Ins. Co. v. Clay*, 525 So. 2d 1339 (Ala. 1987), cert. denied, — U.S. —, 109 S. Ct. 863 (1989); *Olympia Spa v. Johnson*, 547 So. 2d 80 (Ala. 1989), petition for temporary stay vacated, [Ms. A-935, May 30, 1989], — U.S. — (1989) (Kennedy, J.); *Clardy v. Sanders*, 551 So. 2d 1057 (Ala. 1989), cert. denied, — U.S. —, 110 S. Ct. 376 (1989); *HealthAmerica v. Menton*, 551 So. 2d 235 (Ala. 1989), cert. denied, — U.S. —, 110 S. Ct. 1166 (1990). A listing of punitive damage verdicts in Alabama as shown in Appendix A to petitioner's brief, a copy of which is attached for convenience as Appendix A to this brief, illustrates that the problem of punitive damages in Alabama exists in epidemic proportions. Indeed, an entire issue of a recent

Alabama Law Review was devoted exclusively to the topic of punitive damages. 40 Ala. L. Rev. 687-1261 (1989). A copy of the index from this issue is attached to this brief as Appendix B.

The source of the unbridled discretion which continually misguides Alabama juries is the approved Alabama Pattern Jury Instruction on punitive damages found at *Alabama Pattern Jury Instructions* 11.03 (1974), which provides:

The purpose of awarding punitive or exemplary damages is to allow money recovery to the plaintiff by way of punishment to the defendant, and for the added purpose of protecting the public by deterring the defendant and others from doing such wrong in the future. The imposition of punitive damages is entirely discretionary with the jury. Should you award punitive damages, in fixing the amount, you must take into consideration the character and degree of the wrong as shown by the evidence in the case, and the necessity of preventing similar wrongs.

From this charge, skilled plaintiffs' counsel exhort juries to utilize the following pseudo formula in calculating punitive damages. First, determine an amount to punish this defendant. Second, determine an amount to deter this defendant. Third, determine an amount to deter other similarly situated defendants. Add these three figures. All of this fits nicely into the classic "send a message" closing argument, yet affords the trier of fact no guidance whatsoever.

In Alabama, there is no special burden of proof standard for the imposition of punitive damages as opposed to compensatory damages. There is no apportionment of damages among joint tortfeasors. There is no contribution among joint tortfeasors. Our state court has interpreted our Wrongful Death Act, Ala. Code § 6-5-410 (1975), as requiring the imposition of punitive damages, *exclusively*, for wrongful deaths. This is true even where the basis of liability for the death is mere negligence.

See, e.g., Olympia Spa v. Johnson, 547 So. 2d 80 (Ala. 1989).³

A careful examination of Alabama cases reveals that the Alabama Supreme Court has addressed the constitutionality of punitive damages in only two cases, *Central Alabama Elec. Co-op. v. Tapley*, 546 So. 2d 371 (Ala. 1989) and *Industrial Chem. & Fiberglass Corp. v. Chandler*, 547, So. 2d 812, *on application for rehearing*, 547 So. 2d 834 (Ala. 1989). In *Tapley* the Court held that the procedural due process arguments were not properly before the Court, and that the substantive due process arguments were satisfied by a post-verdict review process, discussed later in this brief. In *Chandler* the Court first rejected an Eighth Amendment challenge, and on rehearing responded to Fourteenth Amendment due process arguments by observing that admitting evidence of wealth in an effort to provide standards would be too prejudicial, and again referred to the availability of post-verdict procedures as sufficient due process. These are the only two cases in Alabama with a substantive discussion addressing the constitutionality of punitive damages.

While the Alabama Supreme Court has addressed this issue in only these two cases, there is nonetheless commentary found in Alabama Supreme Court opinions, such as that found in the majority's opinion in the present case as quoted below:

Moreover, in a series of recent cases, this Court has rejected the remaining constitutional arguments submitted by Pacific Mutual. (omitting citations)

³ The statute discusses "such damages as the jury may assess." For a view that the Court has misconstrued the type of damages required by our death act, *see, Tatum v. Schering Corp.*, 523 So. 2d 1042, 1047 (Ala. 1988) (Houston, J., dissenting). Since our Court has construed "such damages as the jury may assess" to mean punitive damages, exclusively, the problem of punitive damages becomes even more distressing.

553 So. 2d 537, 543 (Ala. 1989). Four cases are cited by the Court. In three of those cases, the Court did not address the constitutional issues: *United Am. Ins. Co. v. Brumley*, 542 So. 2d 1231, 1238 (Ala. 1989) ("United American's entire argument on those points [constitutional arguments] is one sentence long, too undeveloped to merit serious review by this Court."); *HealthAmerica v. Menton*, 551 So. 2d 235, 247 (Ala. 1989) ("[T]he defendants did not preserve their constitutional issues for appeal."); *Olympia Spa v. Johnson*, 547 So. 2d 80, 86 ("[D]efendants failed to offer a proper objection or to obtain a ruling from which an appeal could be taken [regarding constitutionality of punitive damages]."). The sole case cited by the Court which indeed addressed these constitutional issues is the previously discussed *Industrial Chem. & Fiberglass Corp. v. Chandler*, 547 So. 2d 812, *on application for rehearing*, 547 So. 2d 834 (Ala. 1989). No mention is made of the *Tapley* case discussed above.

With regard to the constitutionality of punitive damages in Alabama, three members of the Alabama Supreme Court have stated their views that the method for awarding punitive damages in Alabama does not withstand constitutional scrutiny. In the instant case, Justices Maddox and Steagall expressed their views that Alabama's punitive damage procedure is premised upon "wholly standardless discretion." 553 So. 2d at 544.

The third justice, Justice Houston, most recently and most clearly articulated the problems with Alabama's procedure in a concurring opinion in *Charter Hospital of Mobile, Inc. v. Weinberg*, 558 So. 2d 909 (Ala. 1990). Justice Houston specifically recognized that the post-verdict process relied upon so heavily by the Court in *Chandler* as satisfying due process is insufficient. Indeed, it was Justice Houston who, in a concurring opinion, noted in *Land and Associates, Inc. v. Simmons*, [Ms. 87-1313, Dec. 22, 1989], — So. 2d — (Ala. 1989) that punitive damages "are out of hand."

The wide disparity of jury awards for apparently similar misconduct in fraud cases was well illustrated by Justice Houston in the *Simmons* case, just cited. Justice Houston made a comparison of the facts and issues in *Washington Nat'l Ins. Co. v. Strickland*, 491 So. 2d 872 (Ala. 1985) with the facts and issues in *Simmons*. According to Justice Houston, the conduct involved in the two cases was "substantially the same." In *Strickland*, a jury awarded compensatory damages of \$1,369.14, and punitive damages of \$21,130.86, approximately 15½ times compensatory damages. In *Simmons* a jury awarded \$10,000 compensatory damages, and \$2,490,000 in punitive damages, 249 times compensatory damages.

The Alabama Supreme Court's approach to the issues concerning punitive damages in Alabama is further illustrated by two recent decisions. In one case, *Olympia Spa v. Johnson*, 547 So. 2d 80 (Ala. 1989), an objection addressing the constitutionality of punitive damages was raised at trial before the trial court charged the jury, even to the point of citing *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986). Notwithstanding the objection, the trial court charged the jury on punitive damages. The jury returned a \$3 million wrongful death award. Post-trial proceedings focused heavily on the constitutionality of punitive damages, including an appeal to the Alabama Supreme Court fully addressing this issue, as well as a petition for stay of execution to this Court, which was denied. *Petition for temporary stay vacated*, [Ms. A-935, May 30, 1989], — U.S. — (1989). In the opinion released by the Alabama Supreme Court, however, Justice Shores noted that there was nothing for the Court to consider with regard to the question of punitive damages because "no ruling" on the objection was obtained in the trial court. There are three things to note with regard to this ruling.

First, in *Hosey v. Siebels Bruce Group*, 363 So. 2d 751 (Ala. 1978), the same Justice authored an opinion hold-

ing that an objection to a particular proposed jury charge by the trial court was sufficient to preserve an issue for appeal. There is no mention of *Hosey* in *Olympia Spa*.

Second, in *Alabama Power Co. v. Capps*, 519 So. 2d 1328 (Ala. 1988), the Court specifically recognized that an objection to the trial court's charge "during instructions to the jury" would have been sufficient to preserve an issue on the constitutionality of punitive damages. *Id.* at 1330. There was no such objection in *Capps*, but there was in *Olympia Spa*.

Third, Justice Jones authored an opinion applying *Batson v. Kentucky*, 476 U.S. 79 (1986) to civil cases in Alabama, *Thomas v. Diversified Contractors, Inc.*, 551 So. 2d 343 (Ala. 1989). In *Thomas* trial counsel raised a *Batson* objection. Although Justice Jones specifically noted that "the trial judge did not rule on this objection" before empaneling the jury, the absence of a ruling on the objection in *Thomas* did not preclude the Alabama Supreme Court from embracing the proposition that *Batson* applied to civil cases. This position is in stark contrast with the language of Justice Shores that the absence of a specific ruling in *Olympia Spa* precluded review of the constitutional issues raised.

The second case illustrating the approach of the state court regarding the problem of punitive damages is *Charter Hospital of Mobile, Inc. v. Weinberg*, 558 So. 2d 909 (Ala. 1990). In *Weinberg* the Court affirmed that portion of a jury verdict which addressed a compensatory damage award arising out of conversion, but for procedural reasons reversed and remanded for a new trial solely on the issue whether a subsequent jury should additionally award punitive damages on the same cause of action. This unusual approach was undertaken despite *Alabama Rules of Civil Procedure* 59(a)(1), which clearly prohibits the retrial of partial issues, and despite longstanding Alabama case law prohibiting the splitting of a cause of action such as sanctioned by the Court in

Weinberg. O'Neal v. Brown, 21 Ala. 482 (1852); *Terrell v. City of Bessemer*, 406 So. 2d 337 (Ala. 1981).

The foregoing analysis illustrates the approaches taken by the Alabama Supreme Court to the problem of punitive damages in the past few years.

II. THE ALABAMA POST-VERDICT REVIEW PROCESS DOES NOT SATISFY DUE PROCESS

In cases discussed in the preceding section, the Alabama Supreme Court has touted its opinions in *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986) and *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989) as satisfying due process requirements in a post-verdict review by the trial court. Two observations are pertinent.

First, a review of all reported opinions by the Alabama Supreme Court wherein the trial court's *Hammond* findings are set forth reveal that the *Hammond* procedure is form without substance. The following list should contain all reported decisions by the Court in which the entire *Hammond* findings are recited, as of the time this brief went to print, in chronological order: *Alabama Power Co. v. Cantrell*, 507 So. 2d 1295 (Ala. 1987) (on return after remand) (\$1 million electrocution death verdict left undisturbed); *Black Belt Wood Co., Inc. v. Sessions*, 514 So. 2d 1249 (Ala. 1986) (on return after remand) (\$3.5 million accidental death verdict left undisturbed); *State Farm Fire & Cas. Ins. Co. v. Lynn*, 516 So. 2d 1373 (Ala. 1987) (on return after remand) (\$250,000 insurance fraud verdict left undisturbed); *Davison v. Mobile Infirmary*, 518 So. 2d 675 (Ala. 1986) (on return after remand) (refusing to accept trial court's remittitur from \$8 million to \$1.35 million); *Ensor v. Wilson*, 519 So. 2d 1244 (Ala. 1987) (on return after remand) (\$2.5 million verdict for brain damaged baby left undisturbed); *City Bank of Ala. v. Eskridge*, 521 So. 2d 931 (Ala. 1988) (\$62,500 verdict for fraud in suit versus bank left undisturbed); *Hayes v. Payne*, 523

So. 2d 333 (Ala. 1987) (on return after remand) (\$140,000 fraud verdict affirmed); *John Hancock Variable Life Ins. Co. v. Pierce*, 530 So. 2d 719 (Ala. 1987), cert. denied, 486 U.S. 1032 (1988) (on return after remand) (affirming \$150,000 punitive damages in fraud action against insurance company); *United Services Auto Asso. v. Wade*, 544 So. 2d 906 (Ala. 1989) (remitting \$3.5 million bad faith award by \$1 million); *Olympia Spa v. Johnson*, 547 So. 2d 80 (Ala. 1989) (\$3 million death award sustained); *Industrial Chem. and Fiberglass Corp. v. Chandler*, 547 So. 2d 812 (Ala. 1989) (on return after remand) (two \$2.5 million wrongful death verdicts left undisturbed); *Vintage Enterprises, Inc. v. Jaye*, 547 So. 2d 1169 (Ala. 1989), cert. denied, — U.S. —, 110 S. Ct. 377 (1989) (affirming \$500,000 punitive damage award for breach of warranty and fraud in connection with sale of mobile home); and *Pacifico v. Jackson*, [Ms. 87-834, Feb. 2, 1990], — So. 2d — (Ala. 1990) (reinstating jury award of \$1,650,000 in a medical malpractice case). There are two cases in which the Alabama Supreme Court has reduced punitive damage awards pursuant to an extension of *Hammond*: *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989) (affirming remittitur of \$125,000 on a \$150,000 fraud verdict) (quoting with approval the trial judge's observation that "it doesn't take a large verdict to be heard and felt a few miles down the road in Union Springs by two local individuals"); and *Wilson v. Dukonia Corp.*, N.V., 547 So. 2d 70 (Ala. 1989) (setting aside an entire \$21,000 punitive damage award against an individual because of his abject poverty).

The lack of effect given *Hammond* in the instant case illustrates the foregoing observations. 553 So. 2d at 543.

More significantly, a post-verdict procedure wherein the trial court, and not the jury, "tinkers with" the verdict does not satisfy defendant's constitutional rights to have standards applied by the trier of fact rendering the

verdict. As even the Alabama Supreme Court has recognized, "it is possible for a verdict to be excessive even when it is the result of a properly functioning jury." *Green Oil Co. v. Hornsby*, 539 So. 2d 218, 222 (Ala. 1989). As further noted in that case, "it is possible for a jury to hear the evidence in a case, make findings of fact, correctly apply the law, and still, albeit unwittingly, assess damages that bear no reasonable relationship to the accomplishment of those goals." *Id.*

Indeed, in the case before this Court, Justices Maddox and Steagall, in a separate opinion, specifically noted that the *Hammond* process is not sufficient to accord litigants "all the due process protection the Constitution envisions." 553 So. 2d at 545. A third member of the Alabama Supreme Court has likewise reached this conclusion. *Charter Hospital of Mobile, Inc. v. Weinberg*, 558 So. 2d 909 (Ala. 1990) (Houston, J., concurring).

This Court addressed the necessity of specific guidelines or rules by which the impartial execution of laws could be secured as early as 1885. *Yick Wo v. Hopkins*, 118 U.S. 356, 372-73 (1886). It is impressive to recognize the broad variety of circumstances wherein this Court has carefully scrutinized governmental activity in the context of due process and whether there were adequate guidelines for the enforcement of penalties: *U.S. v. L. Cohen Grocery Co.*, 255 U.S. 81, 89 (1921) (striking down legislation which was the equivalent of a "statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury") (recall the Alabama Pattern Jury Charge on punitive damages quoted earlier in this brief); *Baggett v. Bullitt*, 377 U.S. 360 (1964) (holding unconstitutionally vague a state law requiring a loyalty oath of teachers); *Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964) (holding application of state criminal trespass laws unconstitutionally vague and violative of due process because of "in-

adequate guidance to the triers of fact"); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (extensive discussion of procedural due process required for notice and hearing in connection with termination of benefits pursuant to a federal aid program); *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972) ("laws must provide explicit standards for those who apply them") ("a vague law impermissibly delegates basic policy matters to . . . juries for resolution on an ad hoc and subjective basis."); and *Mathews v. Eldridge*, 424 U.S. 319 (1976) (addressing procedural due process adequacy of pre-termination hearing prior to termination of disability benefits). Some of the preceding cases demonstrate microscopic examination of whether adequate guidelines were provided to the trier of fact and hence whether due process was afforded.

The most striking recent example, however, of the Court's concern about a lack of meaningful standards for the trier of fact is with regard to the imposition of capital punishment. *Furman v. Georgia*, 408 U.S. 238 (1972). *Furman* should not be dismissed as a criminal case. In Alabama, the due process clause has been held to be the constitutional underpinning for applying *Batson v. Kentucky*, 476 U.S. 79 (1986) to civil cases. *Thomas v. Diversified Contractors, Inc.*, 551 So. 2d 343 (Ala. 1989). Accord: *Fludd v. Dykes*, 863 F.2d 822 (11th Cir. 1989), cert. denied, — U.S. —, 110 S. Ct. 201 (1989). The fact *Batson* was a criminal case was no bar to holding that civil litigants are entitled to the same process due criminal litigants. Indeed, the due process clause itself makes no distinction between civil and criminal cases. Thus posed, the question is simply whether criminal defendants are entitled to more due process than civil defendants in the area of guidelines for the imposition of punishment. Surely the answer must be that civil litigants are entitled to the same requirement of adequate guidelines for the imposition of punishment as criminal defendants. This is particularly true given the fact that we are dealing with punitive

damages which are designed to serve a punishment effect. For this reason, the *Hammond* procedure does not address the total absence of guidelines provided the trier of fact in Alabama in the assessment of punishment: punitive damages. The *Hammond* procedure, therefore, is constitutionally deficient.

CONCLUSION

There is a significant problem with the imposition of punitive damages in Alabama. The *Hammond* post-verdict review procedure has not resulted in any meaningful modification of the law, and does not satisfy a defendant's due process rights in providing a jury standards by which to award punitive damages.

Respectfully submitted,

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APPENDICES

APPENDIX A

PARTIAL LIST OF ALABAMA JURY VERDICTS
AWARDING PUNITIVE DAMAGES OF \$500,000 OR
MORE FROM JANUARY 1, 1990 TO APRIL 30, 1990

(* indicates wrongful death case)

1990

1. *Wilburn v. Luxaire, et al.* \$50,000,000 *
Mobile County Circuit Court
CV-88-147 *et seq.* (April, 1990)
\$50,000,000 punitive damages, plus
previous settlement of \$11,500,000 for
wrongful death of five-member family
resulting from alleged negligence involving
heating unit.
2. *Sue Chumney as Administrator of the Estate of Christopher E. Long, deceased v. Flowers Hospital* 3,000,000 *
Houston County Circuit Court
CV-87-587 (1990)
Wrongful death of child.
Settled post-trial.
3. *Tate v. P.P.G. Industries* 2,500,00 *
U.S. District Court for the Southern
District of Alabama (February 19, 1990)
Punitive damages for wantonness in
wrongful death case.
4. *Carter v. Old American Insurance Company* 1,400,000
Lauderdale County Circuit Court (April,
1990)
\$1,400,000 punitive damages for bad faith
non-payment of health insurance claim.
See 544 So.2d 917 (Ala. 1989) wherein
summary judgment for the insurer was
reversed.

2a

5. *Burden v. Empire Fire & Marine Ins. Co.* 1,400,000
 Lauderdale County Circuit Court
 CV-88-244 (March 2, 1990)
 Alleged bad faith for failing to settle
 uninsured motorist claim. \$400,000
 awarded for compensatory damages and
 \$1,000,000 for punitive damages.
 Post-trial motions pending.
6. *American Employers Insurance Company v. Southern Seeding Services, Inc., et al.* \$1,150,000
 U.S. District Court for the Northern
 District of Alabama CV 87-G-0294S
 Verdict awarding \$400,000 in
 compensatory damages and \$750,000 in
 punitive damages on February 22, 1990.
 Appeal filed 3/27/90.
7. *Braden v. Dorsey Motor Sales, Inc.* 1,000,000
 Autauga County Circuit Court (April 3,
 1990)
 \$1,000,000 punitive damages, \$15,6000
 compensatory damages for alleged
 fraudulent misrepresentation by car dealer
 that a used car was "new".
8. *William Thornton v. Yamaha Motor Co., Ltd., et al* 750,000 *
 Montgomery County Circuit Court
 CV-88-1639-TM (April 18, 1990)
 Wrongful death.
 No appeal pending.

3a

PARTIAL LIST OF ALABAMA JURY VERDICTS
 AWARDING PUNITIVE DAMAGES OF \$500,000 OR
 MORE FROM JANUARY 1, 1989 TO DECEMBER 31, 1989

(* indicates wrongful death case)

1989

1. *Braswell v. Conagra* \$13,150,000
 U.S. District Court for Middle District
 of Alabama (Southern Division)
 88-00741-T-S (November, 1989)
 Breach of contract and fraud. \$4,050,000
 in compensatory damages and \$1,100,000
 in punitive damages.
 Appeal pending.
2. *Sigafoose, v. Babson Brothers Co.* 10,000,000
 Baldwin County Circuit Court
 CV-86-573 (1989)
 \$10 million punitive damages for fraud
 involving \$21,000 compensatory claim.
 Settled post-trial
3. *Robbins v. State Farm Mut. Auto. Ins. Co.* \$5,000,000
 541 So.2d 477 (Ala. 1989)
 Macon County
 \$5 million punitive damages for bad faith
 and fraud involving \$700 disability claim.
 Remitted to \$500,000. Affirmed by
 Alabama Supreme Court.
4. *Thornton v. Knollwood Park Hospital* \$5,000,000 *
 Mobile County Circuit Court
 CV-85-1275 (1989)
 Wrongful death.
 Settled on Appeal
5. *Turner v. Alabama Power Company* 4,000,000 *
 Montgomery County Circuit Court
 CV-88-1700-PH (August 30, 1989).
 Wrongful death suit.
 Appeal pending.

4a

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6. <i>United Serv. Auto Ass'n v. Wade</i> 544 So.2d 906 (Ala. 1989) Walker County \$3.5 million non-jury punitive damages verdict for bad faith remitted to \$2.5 million. Compensatory damages of \$166,795 plus \$21,962 on contract count. Appeal pending.	\$3,500,000	12. <i>Pettus, Estate of v. Vari-Care</i> Mobile County Circuit Court CV-86-196 (June 20, 1989) Wrongful death. Appeal pending.	2,500,000 *
7. <i>Ford v. Colonial Mortgage Co.</i> Russell County Circuit Court CV-89-010 (November 1989) Punitive damages for fraudulent breach of residential home loan commitment Appeal pending	3,000,000	13. <i>Blackburn, et al. v. Altus Bank</i> Mobile County Circuit Court CV-88-2263 (November 30, 1989) Alleged fraud. Two plaintiffs. \$1,538,753 for one plaintiff, \$500,000 for other plaintiff. Appeal pending.	\$2,038,753
8. <i>Lindblom v. Intercontinental Life Ins. Co.</i> Jefferson County Circuit Court CV-86-7156 (1989) Bad faith & fraud involving \$10,000 death benefit Appeal pending	3,000,000	14. <i>White, et al v. Georgia Casualty Insurance Co.</i> Barbour County Circuit Court, Clayton Division CV-84-037 (June 28, 1989) Bad faith action. Appeal pending.	2,000,000
9. <i>Olympia Spa v. Johnson</i> 547 So.2d 80 (Ala. 1989) Mobile County Wrongful death Affirmed by Alabama Supreme Court	3,000,000 *	15. <i>Stoval, Estate of v. Montgomery Health Care et al.</i> Montgomery County Circuit Court CV87-173-TH (1989) Wrongful death	2,000,000 *
10. <i>Land & Associates, Inc. v. Simmons</i> [Ms. 87-1313, December 22, 1989] — So.2d — (1989) Mobile County Fraud involving \$10,000 in life insurance proceeds Affirmed by Alabama Supreme Court	2,500,000	16. <i>HealthAmerica, et al. v. Menton</i> 551 So.2d 235 (Ala. 1989) Mobile County Fraud involving \$2,400 claim for medical benefits. Affirmed by Alabama Supreme Court; Cert. denied by Supreme Court of United States	1,800,000
11. <i>Majid Jahandarfar, et al v. Lomax Killough, et al</i> Madison County Circuit Court CV88-1269P (November 8, 1989) Wrongful Death. Appeal pending.	2,500,000 *	17. <i>Phillips v. United American Ins. Co.</i> Etowah County Circuit Court CV-87-132JSS (June 2, 1989) Bad faith and fraud involving \$264 unpaid balance on medical claim. Settled post-trial	1,800,000

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18. *Turner v. Deutz-Allis Credit Corporation* 1,609,500
 Barbour County, Clayton Division
 CV-85-043 (October 9, 1989)
 No post-trial relief. Appeal pending.
19. *Beyer v. Beech Aircraft Corp* 1,500,000 *
 Jefferson County Circuit Court
 CV-81-2120 (1989)
 Wrongful death
20. *Terry v. John Carner and Leisure American, Inc.* \$1,500,000
 Jefferson County Circuit Court
 CV 85-6777 (November 1, 1989)
 Fraud claim involving \$5,500 actual damages.
 Settled prior to appeal
21. *Porter v. Hook* 1,300,000
 554 So.2d 382 (Ala. 1989)
 Jackson County
 Action for breach of written contracts.
 Breach of unwritten joint venture agreement and fraud against cable television owner.
 Remitted to \$300,000 by trial court.
 Full verdict reinstated by Supreme Court of Alabama.
22. *Central Alabama Electric Coop v. Tapley* 1,000,000 *
 546 So.2d 371 (Ala. 1989)
 Tallapoosa County
 Wrongful death.
 Affirmed by Alabama Supreme Court
23. *Pacific Mutual Life Ins. Co. v. Haslip* 1,000,000
 [Ms. 87-842, Sept. 13, 1989]
 553 So.2d 537 (Ala. 1989)
 Fraud. Affirmed by Alabama Supreme Court.
 Cert. granted by Supreme Court of United States.

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24. *Carlisle v. Ft. Deposit Motor Co., et al* 1,000,000
 Macon County Circuit Court
 CV-87-30 (April 19, 1989)
 Fraud involving sale of credit life insurance; approximately \$1,000 compensatory damages.
 \$1,000,000 remitted to \$250,000.
 Appeal pending
25. *Shelby County v. Bailey* 1,000,000 *
 545 So.2d 743 (Ala. 1989)
 Jefferson County
 Wrongful death—\$500,000 each for two deaths.
 Affirmed by Alabama Supreme Court.
26. *United American Ins. Co. v. Brumley* \$1,000,000
 542 So.2d 1231 (Ala. 1989)
 Marion County
 Bad faith involving compensatory damages of \$5,000.
 Affirmed by Alabama Supreme Court.
 Rehearing denied.
27. *Battles' Entertainment, Inc. v. First Federal Savings & Loan Association of Russell County, et al.* 800,000
 Lee County Circuit Court
 CV-88-083 (April 20, 1989)
 Fraud in connection with a sale of real estate.
 Settled post-trial.
28. *Robert McDonald v. Continental Casualty Company (CNA)* 750,000
 Houston County Circuit Court
 (March 9, 1989)
 Alleged tort of outrage due to late payment of workmen's compensation benefits.
 Motions for J.N.O.V. and/or remittitur denied by trial court.
 Appeal pending.

29. *Thomas v. Principal Mut. Ins. Co.* 750,000
 Mobile County Circuit Court
 CV-85-1275 (1989)
 Bad faith failure to pay \$1,000 death
 benefit
 Set aside by trial court on defendant's
 motion for J.N.O.V.—Appeal pending
30. *Lombus v. Mitchell Transport, Inc., et al* 600,000 *
 Talladega County Circuit Court
 CV-89-90 (19—)
 Wrongful death.
 Post-trial motions filed.
31. *Harris v. M & S Toyota, Inc.* 500,000
 Jefferson County Circuit Court
 CV-86-1344 (August 22, 1989)
 Alleged fraud involving sale of used car.
 Verdict set aside on J.N.O.V.
 Appeal pending.
32. *Mallory v. Hobbs Trailers* \$500,000 *
 554 So.2d 966 (Ala. September 29, 1989)
 Jefferson County
 Wrongful death.
 Trial court granted defendant's motion for
 J.N.O.V.
 Original verdict reinstated by Supreme
 Court of Alabama.
 Rehearing denied.
33. *Vintage Enterprises v. Jaye* 500,000
 547 So.2d 1169 (Ala. 1989)
 Tallapoosa County
 \$500,000 punitive damages and \$20,000
 compensatory, relating to sale, order,
 delivery of mobile home, fraud,
 wantonness, negligence, warranty and
 Magnuson-Moss theories.
 Affirmed by Alabama Supreme Court.

34. *Watson, Watson & Rutland v. Rosser* 500,000
Fabrap Int'l
 U.S. District Court for Middle District
 of Alabama
 88-H-1292-N (M.D. Ala. 1989)
 Intentional interference with business
 relationship.
 Post-trial motion pending

PARTIAL LIST OF ALABAMA JURY VERDICTS
AWARDING PUNITIVE DAMAGES OF \$500,000 OR
MORE FROM JANUARY 1, 1988 TO DECEMBER 31, 1988

(* indicates wrongful death case)

1988

1. *Turner v. Southern Life & Health Ins. Co.* \$5,000,000
Macon County Circuit Court
CV-87-91 (1988)
Punitive damages for bad faith and fraud involving \$1,000 death benefits.
Remitted to \$500,000.
Appeal pending.
2. *Industrial Chemical & Fiberglass v. Chandler* 2,500,000 *
547 So.2d 812 (Ala. 1988)
Jefferson County
\$3,750,000 punitive damages—\$2.5 million for wrongful death and \$1.5 million for breach of warranty
Affirmed by Alabama Supreme Court
3. *Industrial Chemical & Fiberglass v. Ensley* 2,500,000 *
547 So.2d 812 (Ala. 1988)
Jefferson County
\$3.75 million—\$2.5 million for wrongful death and \$1.25 million for breach of warranty
Affirmed by Alabama Supreme Court
4. *Heathcoat v. Mitchell, Potts, et al.* 3,000,000 *
U.S. District Court for the Northern District of Alabama
Case No. 85-7805, 85-7288 (1988)
Wrongful death
5. *Clardy v. Sanders* 2,750,000 *
551 So.2d 1057 (Ala. 1989)
Montgomery County (January 15, 1988)
Wrongful death.
Affirmed by Alabama Supreme Court.

6. *Proctor & Gamble Co. v. Staples* \$2,750,000 *
551 So.2d 949 (Ala. 1989)
Colbert County (March 2, 1988)
Wrongful death.
Reversed on appeal. Settled thereafter.
7. *Walls v. Colonial Mortgage Co.* 1,700,000
Russell County Circuit Court
CV87-194 (1988)
Fraud involving breach of residential home loan commitment; compensatory damages of \$2,500 or less.
Settled pending appeal
8. *Trawick v. Michaels of Oregon Co.* 1,000,000
U.S. District Court for Middle District of Alabama
88-C-413N (December 21, 1988)
Products liability involving rifle swivel.
Appeal pending on certified question of Alabama Supreme Court.
9. *Williams v. Rust International* 1,000,000 *
Jefferson County Circuit Court
CV-82-174 (1988)
Wrongful death
10. *Achord v. Momar, Incorporated* 863,625
United States District Court for the Middle District of Alabama, Northern Division
No. 87-D-0824-N (September 6, 1988)
Products liability suit. Verdict includes \$500,000 punitive damages.
No appeal.
11. *Carner, et al v. Commercial Union Insurance Company, et al.* 811,804
Jefferson County Circuit Court
CV-82-3504 (1988)
Breach of contract and bad faith

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12.	<i>Ramsey Health Care, Inc. v. Follmer</i>	800,000
	24 ABR 1321	
	Jefferson County Circuit Court	
	CV-87-7215	
	Alleged fraud.	
	Affirmed by Alabama Supreme Court.	
13.	<i>Alabama Power Co. v. Courtney</i>	\$750,000 *
	539 So.2d 170 (Ala. 1988)	
	Chilton County	
	Wrongful death.	
	Affirmed by Alabama Supreme Court.	
14.	<i>Consolidated Freightways v. Pacheco-Rivera</i>	525,000 *
	524 So.2d 346 (Ala. 1988)	
	Jefferson County	
	Wrongful death.	
15.	<i>Alabama Farm Bureau v. Hixon</i>	500,000 *
	533 So.2d 518 (Ala. 1988)	
	Montgomery County	
	Wrongful death.	
	Reversed on appeal.	
16.	<i>Alabama Power Co. v. Capps</i>	500,000 *
	519 So.2d 1328 (Ala. 1988)	
	Butler County	
	Wrongful death.	
	Affirmed by Alabama Supreme Court.	
17.	<i>L. W. Johnson & Assoc. v. Rivers Const. Co.</i>	500,000
	532 So.2d 618 (Ala. 1988)	
	Marion County	
	Fraud action by construction county	
	against developer involving \$165,000	
	compensatory damages	
	Affirmed by Alabama Supreme Court	

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PARTIAL LIST OF ALABAMA JURY VERDICTS
AWARDING PUNITIVE DAMAGES OF \$500,000 OR
MORE FROM JANUARY 1, 1987 TO DECEMBER 31, 1987

(* indicates wrongful death case)

1987

- | | | |
|----|---|----------------|
| 1. | <i>Dale, Estate of v. Griffin, Dept. of Mental Health</i> | \$11,701,372 * |
| | Montgomery County Circuit Court | |
| | CV85-138-K (1987) | |
| | Wrongful death | |
| 2. | <i>Esstate of Jackson v. Phillips Petroleum Co.</i> | 5,100,000 |
| | 676 F. Supp. 1142 (S.D. Ala. 1987) | 2,550,000 |
| | Reduced punitive damages from | |
| | \$5,041,694.04 to \$300,000 in one case, and | |
| | from \$2,519,439.85 to \$150,000 in another. | |
| | Claim for conversion, intentional | |
| | interference with contractual relations and | |
| | wrongful exercise of lien rights. | |
| | New trial granted on refusal to remit | |
| | punitive damages. | |
| 3. | <i>Super Valu Stores, Inc. v. Peterson</i> | 5,000,000 |
| | 506 So.2d 317 (Ala. 1987) | |
| | Etowah County | |
| | Breach of contract and fraud in | |
| | employment relationship. | |
| | Affirmed by Alabama Supreme Court | |
| 4. | <i>Aetna Life Ins. Co. v. Lavoie</i> | 3,500,000 |
| | 505 So.2d 1050 (Ala. 1987) | |
| | Mobile County | |
| | \$3 million punitive damages for bad | |
| | faith refusal to pay \$1,650 medical claim. | |
| | Initially affirmed by Alabama Supreme | |
| | Court, then vacated on appeal to U.S. | |
| | Supreme Court and thereafter remitted to | |
| | \$500,000 by Alabama Supreme Court | |
| | and affirmed. | |

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5. *State Farm Mutual Automobile Insurance v. Hollis, Adm.* \$1,500,000
 ABR 87-808
 Coffee County Circuit Court
 CV-853 (1987)
 Bad faith claim alleging negligence or wanton failure to settle lawsuit and wanton failure to file supersedeas bond.
 Reversed and remanded for new trial.
6. *Talmage v. Humana Hospital Florence, et al* 1,500,000 *
 Lauderdale County Circuit Court
 CV-85-135 (September 10, 1987)
 Wrongful death.
 Settled post-trial.
7. *Curry, Estate of v. Alabama Gas, et al* 1,250,000 *
 Montgomery County Circuit Court
 CV86-323-G (1987)
 Wrongful death
8. *North Carolina Mut. Life Ins. Co. v. Holley* 1,000,000—
 533 So.2d 497 (Ala. 1987)
 Tallapoosa County
 Bad faith.
 Remitted to \$500,000 by Alabama Supreme Court.
9. *Best Plant Food Products, Inc. v. Cagle* 972,000
 510 So.2d (Ala. 1987)
 Jackson County
 Breach of warranty/fraud/deceit.
 Affirmed by Alabama Supreme Court.
10. *Hixon v. Village West Trailer Park* 750,000 *
 Montgomery County Circuit Court
 CV-84-1447-PR (February 4, 1987)
 Wrongful death.
 Reversed and rendered on appeal.

15a

11. *Harmon v. Motors Ins. Corp.* 500,000
 493 So.2d 1370 after remaj.d 525 So.2d 411 (1987)
 Calhoun County
 \$500,000 punitive damages for fraud remitted to \$40,000.
 Affirmed conditionally

PARTIAL LIST OF ALABAMA JURY VERDICTS
AWARDING PUNITIVE DAMAGES OF \$500,000 OR
MORE FROM JANUARY 1, 1986 TO DECEMBER 31, 1986

(* indicates wrongful death case)

1986

1. *Davison v. Mobile Infirmary* \$8,000,000
518 So.2d 675 (Ala. 1986)
Mobile County
\$8 million punitive damages for medical malpractice remitted to \$1,350,000
2. *Beck, Murray, Tull v. Piper Aircraft, et al.* 5,175,000 *
Jefferson County Circuit Court
CV-83-6266 (1986)
Wrongful death.
3. *Black Belt Wood Yard v. Sessions* 3,500,000 *
514 So.2d 1249 (Ala. 1986)
Jefferson County
Wrongful death.
Affirmed by Alabama Supreme Court
4. *Patricia L. Crandall, et al. v. Rudolph V. Williams* 3,035,000 *
514 So.2d 1267 (Ala. 1987)
Madison County Circuit Court
CV-85-461, CV-85-379 consolidated
(January 13, 1986)
One death—\$500,000; one personal injury—
\$2,500,000 (compensatory and punitive—
general verdict); two personal injuries—
\$2,500 each (compensatory and punitive—
general verdict); one subrogation—\$30,000.
Affirmed.
5. *Treadwell Ford, Inc. v. Campbell* \$1,000,000 *
485 So.2d 312 (Ala. 1986)
Mobile County
Three plaintiffs—\$1,000,000 wrongful
death; \$60,000 negligence; and \$350,000
which included compensatory damages and
350,000

punitive damages for fraud involving a defect in the accelerator of a pickup truck.
Affirmed by Alabama Supreme Court.
Appeal dismissed by 486 U.S. 1028, 108 S.Ct. 2007, 100 L.Ed.2d 596
(U.S.Ala., May 31, 1988)

6. *Alabama Power Co. v. Cantrell* 1,000,000 *
507 So.2d 1295 (Ala. 1986)
St. Clair County
Wrongful death.
Affirmed by Alabama Supreme Court.
Appeal dismissed by 486 U.S. 1028, 108 S.Ct. 2008, 100 L.Ed.2d 596
(U.S.Ala., May 31, 1988)
7. *AmSouth Bank v. Speigner* 1,000,000 *
505 So.2d 1030 (Ala. 1986)
Elmore County
Wrongful completion, cashing of \$25,000 check.
Settled on appeal.
8. *Rollison Logging Company of Alabama, Inc. v. John Ellis, et al.* 1,000,000
Cherokee County Circuit Court
CV-84-03 (May 12, 1986)
Alleged fraud involving proposed purchase of logging equipment. Compensatory damages in the amount of \$78,416 and punitive damages in the amount of \$921,584.
Remitted to \$200,000

PARTIAL LIST OF ALABAMA JURY VERDICTS
AWARDING PUNITIVE DAMAGES OF \$500,000 OR
MORE FROM JANUARY 1, 1985 TO DECEMBER 31, 1985
(* indicates wrongful death case)

1985

1. *Holt v. State Farm Mutual Auto Ins. Co.* \$25,000,000
Clay County Circuit Court
CV-82-060 (1985)
Fraud involving UM stacking; \$10,000
contract claim
Settled post-trial
2. *McMillian v. Massey Ferguson, Inc., et al.* 10,500,000
Mobile County Circuit Court
CV-82-686 (1985)
\$10.5 million general verdict which included
\$584,000 actual damages for partial leg
amputation caused by alleged wanton-
ness in design & manufacture of grain
auger. Settled pending appeal
3. *General Motors Corp. v. Edwards* 4,000,000 *
482 So.2d 1176 (Ala. 1985)
Jefferson County
Two plaintiffs at \$2 million each
Remitted by trial court to \$1.4 million each
Affirmed by Alabama Supreme Court
Overruled by *Schwartz v. Volvo North Ameri-*
can Corp., 554 So.2d 927, 58 U.S.L.W. 2132
(Ala. July 28, 1989)
4. *May v. Lloyd Noland Foundation* 4,000,000 *
Jefferson County Circuit Court
CV-79-583 (1985)
Wrongful death
Settled Post-Trial
5. *Wright v. Superior Gas* 3,600,000 *
Macon County Circuit Court
CV-84-47 (1985)
Wrongful death.
Settled post-trial

6. *American Pioneer Life Ins. Co. v. Sandlin* \$3,000,000
470 So.2d 657 (Ala. 1985)
Marion County
\$3 million punitive damages for fraud in-
volving \$100,000 compensatory damages.
Affirmed by Alabama Supreme Court.
7. *Pasquale Food Co. v. Shakey's Inc.* 3,000,000
Jefferson County Circuit Court
CV-82-2606 (1985)
Punitive damages for intentional interference
with business relationship and improper
acquisition of trade secrets.
8. *Hudson v. K&S Industries, Inc.* 2,000,000 *
Montgomery County Circuit Court
CV-84-593 (1985)
Wrongful death
9. *Nationwide Mut. Ins. Co. v. Clay* 1,250,000
469 So.2d 533 (Ala. 1985)
Mobile County
Bad faith involving \$40,000 disability claim.
Affirmed by Alabama Supreme Court.
10. *Kathy Dunaway, as Mother and Custodial
Parent of Daniel Allen Dunaway, a Minor,
v. Alabama Power Company* 500,000 *
Montgomery County Circuit Court
CV-84-650-PR (December 13, 1985)
Wrongful death
Appealed. JNOV for Defendant on 4/02/87.
(Reversed)

APPENDIX B
ALABAMA LAW REVIEW

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